STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company	**)**	
d/b/a Ameren Illinois	**)**	
	)	**Docket No. 13-0192**
Proposed General Increase in Gas Rates	**)**	
	)	

INITIAL BRIEF OF THE CITIZENS UTILITY BOARD

THE CITIZENS UTILITY BOARD
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Now comes the Citizens Utility Board ("CUB"), pursuant to Rules of Practice of the Illinois Commerce Commission ("ICC" or "the Commission"), 83 Ill. Admin. Code Part 200.800, and pursuant to the briefing schedule established by the Administrative Law Judges ("ALJs"), to herby file this Initial Brief in the above-captioned proceeding.

I. INTRODUCTION

A. Overview

Ameren Illinois Company d/b/a Ameren Illinois ("Ameren," "AIC" or "the Company") filed the instant rate case pursuant to Section 9-201 of the Public Utilities Act ("PUA" or "Act"). Pursuant to Section 287.20 of the Commission's rules, 83 Ill. Admin. Code 287.20, the Company chose a future test year of January 1 through December 31, 2014. Thus, all of the data underlying the Company's asserted revenue requirement is based upon forecasts of anticipated future rate base, expenses, revenues and costs of capital. AG/CUB Ex. 1.0 at 5:100-103.

In a rate case where a future test year is used, the Company's forecasts must be carefully evaluated to avoid overstatement. Use of forecasted rather than actual recorded data creates an opportunity for management to aggressively forecast higher future costs, because doing so is directly rewarded with higher utility rates. *Id*. at 5:111-15. Utility management has a fiduciary obligation to maximize returns for investors, so in a future test year rate case, every foreseeable cost that may be incurred is fully included in the utility's ratemaking forecast. *Id*. at 6:117-20.

This also means that any potential, but uncertain, opportunities to reduce future costs are likely to be ignored or discounted. *Id*. at 6:120-22. If the Commission approves rates that include every foreseeable cost, and discount or ignore potential reductions, ratepayers are certain to pay rates in excess of the utility's actual costs of service. It is inevitable that not every cost projected twelve months out will come to fruition, and that some opportunities for savings or other reductions will present themselves.

There is no better indicator of how much it costs to operate and maintain a business than what is actually being spent. *Id*. at 9:177-78. This is particularly true in light of the fact that the Company has provided very little explanation for the many of the significant increases it proposes, or why historical actual expenditures in 2012 by AIC were insufficient or inadequate to provide safe and adequate service. *Id*. at 10:204-11:212. In fact, In Ameren's most recent gas rate case, ICC Docket 11-0282, the Company over-estimated its Operations and Maintenance ("O&M") costs for 2012 by $8.0 million, or about 5%. Ameren has proposed test year O&M expense that are 17 percent above actual 2012 gas O&M expense amounts, and 11 percent above the expense levels approved for 2012 in the Company's last gas rate case. *Id*. at 7:151-55. Therefore, since that time, rates have been set incorrectly and ratepayers have been overpaying for O&M expense.

In this case, the Commission should be cognizant of the inherent utility bias toward overstatement in a future test year rate case. The Commission should compare the Company's forecasts to a comparison of recent actual O&M expense levels. For example, the Company has forecasted 86 new positions in its labor expenses. However, despite the diligent best efforts of AG/CUB witness Mr. Brosch, he was unable to determine how AIC came to the conclusion that 86 new positions were needed in the test year. *Id*. at 17:367-73. A similar situation exists with respect to the Company's forecasted non-labor expenses. Ameren has not been able to substantiate many of the significant proposed increases, and does not even have workpapers to substantiate them. *Id*. at 23:536-39. The Commission cannot possibly determine that rates set on unverifiable, unfounded projections are just and reasonable.

With regard to the Company's proposed rate design, Ameren's quest to increase its fixed cost recovery further by increasing residential customer charges should be rejected. Furthermore, the Commission must revise the rates of GDS-4 and GDS-5 to correct the under-recovery of the costs caused by those customer classes.

In order to determine whether to go forward with an SVT program, the Commission should seek evidence of qualitative and quantitative benefits from SVT, how those benefits would be derived, and how the projected benefits compare to projected costs of implementation and operation of the SVT program. If the Commission determines to go forward with SVT in Ameren Territory, the Commission should adopt the tracking/reporting requirements and consumer protections recommended by CUB witness Cohen in order to ensure that the consumers that are paying for the program realize concomitant benefits from it.

II. RATE BASE

A. Resolved Issues

1. ADIT Bonus Depreciation

Mr. Effron demonstrated that the accumulated deferred income taxes ("ADIT") related to bonus depreciation on 2013 plant additions must be included in the Company's test year rate base. AG/CUB Ex. 2.0 at 7:137-10:205. Ameren accepted Mr. Effron's method of calculating the ADIT on 2013 bonus depreciation. Ameren Ex. 17.0R at 6:122-25.

2. Budget Payment Plan Balances

Budget payment plan balances represent the cumulative difference between the amounts collected from budget plan customers and the amounts receivable from those customers for service provided. AG/CUB Ex. 2.0 at 10:209-11. Mr. Effron demonstrated that the Company's rate base did not recognize any balances related to the budget payment plan, though a credit of $908,000 existed as a result of the cumulative amount collected being greater than the amount receivable. *Id*. at 11:231-34. The Company adopted Staff's similar recommendation, thus resolving this issue. AG/CUB Ex. 6.0 at 3:9-11.

B. Contested Issues

1. ADIT – Step-Up Basis Metro

The debit balance included in Account 190 for "tax depreciation step-up basis Metro," an an offset against the credit balances in the determination of the net ADIT balance, should be eliminated. AG/CUB Ex. 2.0 at 4:73-76. A utility's net rate base value is measured as the plant in services minus ADIT; that is the value that ultimately goes into the revenue requirement. AG/CUB Ex. 6.0 at 1:22-2:3. ADIT decreases rate base; the effect of the offsetting credit created by the Company therefore inappropriately increases rate base.

This balance is related to the 2005 transfer of certain tax-depreciable assets from AIC legacy company Union Electric to CIPS. AG/CUB Ex. 1.0 at 4:80-83. At the time the transfer took place, the book value of the assets was higher than the tax value of the assets. *Id*. at 4:81-83. The transfer took place at the book value. *Id*. at 4:81-82. There was no gain for tax purposes, because the two companies involved were affiliates and filed a consolidated tax return. *Id*. at 4:83-84. However, CIPS "stepped up" the tax basis of the assets to be equal to their book value; with those values equal, there would be no net deferred taxes. *Id*. at 4:85-87. CIPS recorded a deferred tax asset on their books to offset the related ADIT at the time of the transfer. *Id*. at 4:86-88.

The ultimate result of the transfer was that the value of the assets included in the rate base of CIPS was greater than the assets had been when on the books of Union Electric. *Id*. at 5:108-11. That is obviously an inequitable result for ratepayers. The transfer of assets should not result in an increase to the net value of the assets included in rate base. *Id*. at 6:133-7:135. In the Company's electric formula rate cases, the Commission allowed the Company to include the deferred tax debit balances related to tax depreciation step-up basis metro in the electric rate base. *Id*. at 6:123-27. However, the issue in that case was different because it in those cases, the ADIT that had existed before the transfer were, in effect, reduced to zero. *Id*. at 127-31. The Commission did not address the issue presented in this case—the net-of-tax value of assets increasing as a result of the transfer. *Id*. at 131-33.

Staff witness Ms. Mary Everson proposed the same adjustment as Mr. Effron. She explained that the assets are the same under the ownership of CIPS or Union Electric, yet the ratemaking effect is different under CIPS' ownership. Staff Ex. 1.0 at 11:200-201. She concluded that the rate base value attributable to the assets for ratemaking purposes should not change because the assets were transferred between affiliates. *Id*. at 11:206-12:209.

Ameren witness Mr. Stafford acknowledges that prior to the transfer, there was a balance of ADIT on the books of UE; as a result of the transfer, the balance of ADIT on the UE books was, in effect, eliminated. AG/CUB Ex. 6.0 at 2:4-7. Since ADIT decreases rate base, eliminating ADIT increased the rate base value of those assets. *Id*. at 2:7-9. Ameren's choice to increase the asset's rate base value should not be accepted by the Commission. The deferred tax asset which currently decreases ADIT should be eliminated from the company's rate base. *Id*. at 2:12-14. This adjustment is quantified in AG/Cub Ex. 2.1, DJE-1.1.

2. Cash Working Capital

a. Pass-Through Taxes Lead Days

The Company's Cash Working Capital ("CWC") calculation of pass-through taxes, Municipal Utility Taxes and Energy Assistance Charges, should be calculated using zero lead days. However, the Company relies on the flawed methodology approved in its last gas rate case, rather than acknowledging the Commission's practice in the Company's more recent decisions (including the Company's last two electric formula rate cases), for calculating its CWC with respect to pass-through taxes. The Commission has found that "pass-through taxes should not be assigned a revenue lag because they are payable after revenues are collected from customers." ICC Docket 11-0721 Final Order of May 29, 2012 at 46. The Commission held that customers should not be required to pay the increases costs associated with a utility's choice to pay taxes and charges before they are due. *Id*.

However, in this case, the Company has calculated its CWC requirement based on a flawed methodology proposed by Mr. Heintz. Though the Commission approved that methodology in the Company's last gas rate case, the Commission has since made findings in several cases (ICC dockets 11-0721, 12-0001, 12-0293, and 12-0321) which support a methodology more consistent with the actual timing of cash flows associated with pass-through taxes. AG/CUB Ex. 1.0 at 41:962-69. There has been no change in the remittance schedule for pass-through taxes that would justify a departure from the Commission's most recent decisions. *Id*. at 40:952-56.

With respect to pass-through taxes such as the Municipal Utility Tax and Energy Assistance Charges, the Company acts only as a collection agent—adding the taxes to customers' bills and collecting the charges for later remittance to the taxing authorities. *Id*. at 41:972-76. They are not payable until after they have been received and collected from customers. *Id*. at 42:989-92. The Commission's decision in this case should remain consistent with its recent findings, and should acknowledge the reality that there is in fact no revenue lag, and should assign zero lead days to pass-through taxes. This adjustment is reflected in AG/CUB Ex. 5.1, pages 7 through 9, at line 14.

III. OPERATING REVENUES AND EXPENSES

B. Contested Issues

1. Pension/OPEB Expense – Employee Benefits Adjustment

AG/CUB witness Mr. Smith, along with Staff witness Mr. Kahle, demonstrated that an adjustment to the Company's proposed pension and other post-employment benefits ("OPEB") expense is necessary to reflect the most accurate information available. AG/CUB Ex. 4.0 at 9:180-85. The Company's request was based on an actuarial estimate of pension and OPEB plan costs made by the Company in October 2012. *Id*. at 8:174-9:176. Mr. Smith recommended on Direct that the most recent information available – at that time, the plan balances as of December 2012, should be used. *Id*. at 9:176-85. On Rebuttal, once the February 2013 update was available, Mr. Smith recommended using those figures, as they were the most recent data. AG/CUB Ex. 8.0 at 2:43-3:47.

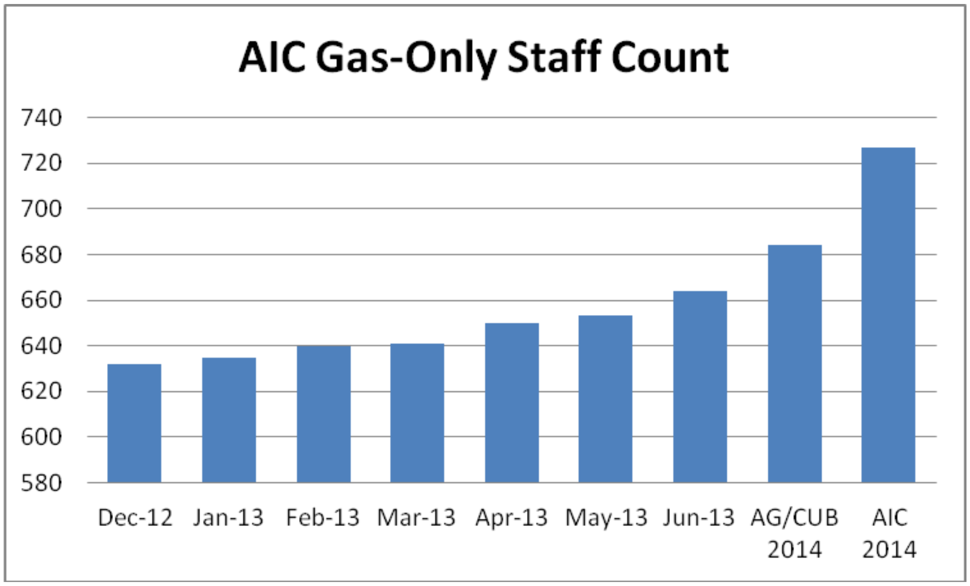
On surrebuttal, the Company agreed to reflect the Pension/OPEB adjustment recommended by Mr. Smith and Mr. Kahle, but made three other cost increases as well for which it claimed more recent information had shown were higher than expected when it filed its rate case. Ameren Ex. 30.0 at 4:84-88, Ameren Ex. 16.0 at 7:147-53. Those three costs are: interest expense, SVT program costs and an O&M adjustment related to the Enterprise Asset Management and Mobile Work Management systems. Ameren Ex. 16.0 at 7:147-50. CUB will address the rental revenue of the Enterprise Asset Management and Mobile Work Management systems below, in III.B.11. Though CUB is not explicitly addressing the other two proposed updates, CUB does not agree that they are necessary.

2. Non-Union Wages

The Commission should adopt Staff witness Mr. Kahle's adjustment to non-union wages. His adjustment the actual rate of non-union wage increase experienced through June 30, 3013 of 3.59%. Staff Ex. 11.0 at 12:230-32. In contrast, the Company's proposed increases uses an escalation of 4.00%. Staff Ex. 2.0 at 16:305-06. That is likely an overstatement, given that for the years 2009 through 2012, the average non-union wage increase was 2.8%. *Id*. at 16:315-17:318. The Commission should therefore use Mr. Kahle's calculation, which is a more reasonable escalation over 2012 non-union wages.

3. Forecasted Labor Expenses

The Commission should adjust the Company's improbable labor projections to reflect more realistic staffing levels. The Company proposes to include 86 new positions in O&M expense, but did not provide specific supporting justification for them. AG/CUB Ex. 1.0 at 16:349-17:361. That staffing level would be significantly higher than in the 12-months prior to the test year, as shown on the table below. A more reasonable expectation is the Company may add 43 new positions – one half of its current proposal. Such an adjustment would still allow the Company to make progress toward the activities identified by the Company, while recognizing that the Company has repeatedly failed to explain what this additional staff is needed to do and how these needs differ from the Company's current level of operations. AG/CUB Ex. 5.0 at 26:640-43. The table below shows the Company's actual staffing levels December 2012 through June 2013, and shows both the AG/CUB proposed staffing level as well as the Company's proposed staffing level.



AG/CUB Ex. 5.0 at 24:603-04.

The Company currently believes that it is performing adequately across all performance measures tracked presently and is providing safe and reliable gas service. AG/CUB Ex. 1.0 at 20:474-49. Ameren says it forecasted staffing levels on the basis not of what it needs just to "get by," but to "pursue activities and advance programs to improve the integrity" of its systems. Ameren Ex. 22.0 (Rev.) 21:459-63. The Commission should not accept these very general statements that significantly more work is needed in just six months, beginning March 2013, without any specification as to what this work is or why it cannot be adequately handled with the Company's already expanded staffing, plus the additional 43 employees proposed by AG/CUB. *Id*. at 26:643-48. The Company's actual staffing only recently exceeded 640 employees; the AG/CUB proposal allows for a staffing level of 684. *Id*. at 28:700-705. This more moderate increase is more than sufficient to meet the Company's unspecified needs, and the Commission should adjust the Company's proposal accordingly.

If the Commission determines that AIC has substantiated its need for substantially higher staffing levels than presently exist, the Company's 2013 year-end staffing at 706 positions could be considered. AG/CUB Ex. 5.0 at 30:752-57. This adjustment is quantified in AG/CUB Ex. 5.1 at page 2.

4. Forecasted Non-Labor Expenses

Reductions are needed to several of the Company's excessively increased forecast levels. AIC forecasts miscellaneous O&M non-labor expenses, such as the estimated costs of materials, contract labor, and professional services, using a bottom-up budgeting process. AG/CUB Ex. 1.0 at 22:511-12. Unless specifically determined otherwise, this process assumed a 2.0% annual rate of inflation for 2014. *Id*. at 22:512-14. The Company's budgeters use historical cost levels and their own judgment to deviations from that assumption, based on the activity, cost category, business division, input from managers, superintendents and supervisors, and other factors. *Id*. at 22:514-20.

It should first be noted that the Company claims it did not create or retain workpapers for many of its forecast system inputs, so Staff and intervener witnesses in this case were only able to obtain workpaper support for a limited number of AIC non-labor forecast inputs. AG/CUB Ex. 5.0 at 33:825-28. Thousands of non-labor expense inputs have not, and apparently cannot, be critically reviewed. *Id*. at 33:832-33.

AG/CUB witness Mr. Brosch proposed a series of reductions to certain of the non-labor expense forecast amounts proposed by AIC, in the limited instances where the Company provided enough data to isolate apparently overstatement of projected costs in the test year.

AG/CUB Ex. 1.0 at 22:523-26. Mr. Brosch proposed seven discrete adjustments, found in AG/CUB Ex. 1.3 at page 2 and supported in footnotes on that schedule; those seven adjustments represent a few of the limited number of inputs for which he was able to gather workpaper support. AG/CUB Ex. 5.0 at 33:821-28. On rebuttal, Mr. Brosch provided detailed revisions to several of those adjustments, based on information the Company provided in rebuttal. These adjustments are quantified in AG/CUB Ex. 5.1 on page 2.

5. Rate Case Expense

Section 9-229 of the Public Utilities Act ("PUA") requires the Commission to evaluate the justness and reasonableness of rate case expense. 220 ILCS 5/9-229. Staff witness Mr. Ostrander found that the Company seeks recovery of some unreasonable rate case expense – specifically, expenses for a cost of a rebuttal witness that never materialized. Staff Ex. 12.0 at 4:69-72. It is the Company's burden of proof to demonstrate the reasonableness of its rate case expense, and expenses that are ultimately not needed because the Company engages less witness than initially expected are not reasonably included in the revenue requirement. The Commission should therefore adopt Mr. Ostrander's adjustment to rate case expense.

6. Charitable Contributions

The Company's proposal to recover an amount of charitable contribution expense 124 percent above actual 2011 contributions and forty percent above actual 2012 contributions should be rejected and adjusted to a more probable level. AG/CUB Ex. 1.0 at 32:780-33:782. The Company has not justified this staggering increase, nor why the level of donations that were actually made and apparently viewed as reasonable by AIC in 2011 and 2012 would not also be sufficient in 2014. *Id*. at 33:786-92.

AG/CUB witness Mr. Brosch proposed a more reasonable level of recovery – no higher than full recovery of what AIC decided was an adequate level of charitable contributions in 2012, plus an escalation for inflation. AG/CUB Ex. 5.0 at 49:1223-26. It should be noted that Staff proposed an even lower allowance. Staff Ex. 1.0, Schedule 1.08. Staff witness Ms. Everson recommends reducing the overall level of forecasted contributions to a 3-year average of actual contributions, 201-02012, with a 2% increase for 2013 and for 2014. Staff Ex. 1.0 at 7:116-21. Staff's recommendation is also reasonable.

The Company itemized certain historical charitable contributions by payee, but presented no similar anticipated itemization for either 2013 or 2014. AG/CUB Ex. 1.0 at 32:772-74. Additionally, the Company has not supported the *aggregate* level of charitable contributions. *Id*. at 33:790-92. The Company's explanation that its proposed increase is reasonable "when compared to the amount AIC is currently recovering in gas delivery rates," Ameren Ex. 21.0 at 5:93-94, is also not persuasive. The fact that the Company is currently recovering an excessive amount has no bearing on what the Company should recover in the test year. Previous estimates by the Company in its prior rate cases were clearly excessive in comparison to actual contributions determined to be needed in later years by AIC management. AG/CUB Ex. 5.0 at 51:1255-61. The Commission should note AIC's lower recent actual contributions, and should consider that the Company's forecast is inherently biased toward overstatement of uncertain future costs for discretionary expenses. *Id*. at 52:1275-79.

Charitable contributions are not necessary for the provision of safe and reliable utility service, and ratepayers should not be burdened with excessive amounts of such discretionary and difficult to forecast expenditures. That is particularly true in light of the Company's own admission that it decreased its actual contributions in 2010 and 2011 in response to financial conditions. Ameren Ex. 21.0 at 6:112-17. After the Commission's order in the Company's last gas rate case, ICC Docket 11-0282, the Company "reduced its 2012 budgeted contributions to realign spending with the amount of forecasted contributions approved by the Commission." Id. at 6:114-17. Though the Company is free to make charitable contributions in any amount it chooses, the PUA only allows recoverability of a reasonable level. 220 ILCS 5/9-227. A reasonable level could be either the Company's actual 2012 contributions, with a 2% escalation factor for 2013 and a 2% escalation factor for 2014, as propose by Mr. Brosch, or an average of the Company's 2010-2012 contributions, with a 2% escalation factor, as proposed by Staff witness Ms. Everson. The Commission should adopt the adjustment proposed by Mr. Brosch or Ms. Everson. Mr. Brosch's adjustment is quantified in AG/CUB Ex. 5.1 at page 4.

7. Forecasted Advertising Expenses

The Company's excessive forecasted spending on Informational and Instructional Advertising should be adjusted based on the Commission's recently-completed analysis of comparable actual expenditures in ICC Docket 12-0293. AG/CUB Ex. 1.0 at 36:863-67. The Company has no detailed advertising programs or spending plans for 2014 that it has submitted for review in this docket, so the best available proxy for the advertising that may eventually be done in 2014 is the recent actual spending programs and advertising messages. *Id*. at 37:877-82. Indeed the Company has agreed that the portfolio of 2011 actual advertising messages and programs are indicative of how the Company will advertise in 2014. *Id*. at 37:883-86. In the absence of a detailed breakdown of different advertising campaigns or spending patterns for the 2014 test year, the Commission should rely on the actual 2011 data and should disallow at least 27% of the forecasted 2014 advertising expense. *Id*. at 36:864-67.

Staff witness Ms. Pearce has offered another reasonable approach to adjusting the Company's forecasted advertising expenses. She calculated a four-year average of the Company's actual advertising expense, and noted the Company's request is 68% higher than that four-year average. Staff Ex. 4.0R at 6:130-33. Ms. Pearce recommended an adjustment to reduce forecasted 2014 advertising expense for amounts that 1) were previously disallowed by the Commission in Docket 12-0293, 2) are in excess of a two-percent inflation factor applied to estimated 2012 and 2013 costs, or 3) are in excess of her four-year average of advertising expenses with escalation factor. *Id*. at 6:120-126. Ms. Pearce's adjustment is reasonable, and the Commission should adopt either her adjustment or the adjustment proposed by Mr. Brosch. Mr. Brosch's adjustment is quantified in AG/CUB Ex. 5.1 at page 6.

8. Sponsorship Expense

The Company included $133,000 for corporate sponsorships in 2014. AG/CUB Ex. 1.0 at 34:822-26. However, it is not possible to review the reasonableness of such costs because the Company did not provide an itemized breakdown of this amount by event or by payee. *Id*. at 35:827-29. Instead, the Company provided the detailed breakdown of actual 2011 sponsorships, used by the Company in its most recently-concluded electric formula rate case, ICC docket 12-0293, and stated it "expects to support similar types of events in 2014." *Id*. at 35:829-832. Such reliance is questionable, given that most (77%) of the event sponsorships costs incurred by the Company were disallowed by the Commission in docket 12-0293. *Id*. at 35:838-39. Given the absence of detailed itemization of sponsorship costs for this case, the best available data is that which was reviewed by the Commission in that docket. *Id*. at 36:851-54. Therefore, a 77% disallowance is appropriate. *Id*. at 36:854-57.

The Company proposed its own level of self-disallowance of forecasted test year sponsorship costs in its rebuttal, but it is not based on the most recently available data. AG/CUB Ex. 5.0 at 54:1320-23. It is based on data provided in the Company's pending electric formula rate case, ICC docket 13-0301. Ameren Ex. 21.0R at 32:680-89. However, the Commission has not yet made a decision in that case, and Staff witness Mr. Knepler has recommended disallowance of nearly all of the sponsorship costs proposed by AIC. *Id*. at 54:1342-55:1348. Those costs are still in dispute, and are therefore not the best source of data for review in this case.

Therefore, the most reasonable adjustment is to apply the same percentage recoverability as was used in the Commission's order in docket 12-0293, a 22.4% recoverability rate. *Id*. at 55:1365-66. That is the most recently available final analysis and determination of the portion of such costs likely to be properly recoverable from ratepayers. *Id*. at 55:1367-59. This adjustment is quantified in AG/CUB Ex. 5.1 at page 5.

9. Credit Card Expenses

In ICC Docket 12-0293, the Company's most recently-resolved electric formula rate case, the Commission identified specific credit card (at that time, referred to as "P-Card") purchases which were excessive and/or not reasonably related to the provision of delivery services. ICC Docket 12-0293, Final Order of December 5, 2012 at 67-68. In this case, Staff witness Ms. Pearce performed an individualized analysis of credit card charges by Ameren employees, and determined many should be disallowed. Staff Ex. 13.0 at 15:346-17:382. She recommends disallowance of charges for flowers, cakes, televisions, finance charges for cash advances, and other items that are excessive, unnecessary for the provision of utility service, or do not provide benefits to ratepayers and/or benefit AIC employees as a perquisite. *Id*. at

16:355-68. The expenses identified are not just and reasonable, and should be excluded from the revenue requirement.

10. **Non-Residential Revenues Adjustment**

The Company's forecast of 23% decreases in sales for industrial and transportation customers is unreasonable. AG/CUB Ex. 2.0 at 12:246-55. The significant decreases forecasted by the Company are not actually taking place. *Id*. at 13:269-71. In fact, the sales revenues from the two customer classes at issue actually increased substantially from the first four months of 2012 to the first four months of 2013. *Id*. at13: 274-77. Industrial system sales increased from 37,959,000 therms in the first four months of 2012 to 51,585,000 therms in the first four months of 2013. *Id*. at 13:278-79. Transportation revenues increased from $12,157,000 in the first four months of 2012 to $14,174,000 in the first four months of 2013. *Id*. at 13:279-81. Clearly, the reductions forecasted by the Company are not taking place. *Id*. at 14:285-86.

The best measure of the Company's likely 2014 industrial and transportation sales is the Company's most recent actual experience. Mr. Effron compared the actual industrial and transportation revenues for the twelve months ended June 30, 2013 to the forecasted test year revenues. AG/Cub Ex. 6.0 at 4:18-21. He revised his analysis based on the customer classifications provided by the Company in rebuttal. *Id*. at 6:10-16. This demonstrated that a reasonable adjustment would reduce test-year industrial system base rate revenues of $358,000 and increase test year transportation base rate revenues of $4,450,000, for a net increase to the Company's test year base rate revenues (under present rates) of $4,092,000. *Id*. at 5:4-9, *citing* AG/CUB Ex. 6.1, Schedule DJE-2R.

Mr. Effron's analysis did not "overlook" the Commercial and Public Authority classes of customers, as Ameren complains. AG/CUB Ex. 6.0 at 5:12-15, *citing* Ameren Ex. 24.0 at 6. He analyzed the forecasted test-year sales to those customer classes and concluded that the forecasted test year sales were reasonable. *Id*. at 5:15-16. For each of those classes, he analyzed the Company's forecasts in comparison to actual weather-normalized sales in 2010-2012. *Id*. at 5:18-6:5. Therefore, no adjustment was necessary to those forecasts, and Mr. Effron excluded them from his analysis. *Id*. at 6:6-13.

The Company further complains that Mr. Effron's analysis is flawed because transportation service also includes Commercial customers. Ameren Ex. 38.0 at 3:57-67. However, the Company's own data request responses showed all Transportation Sales as being Industrial. AG/CUB Ex. 6.0 at 8:1-3. The Company revised its responses, but showed no split to designate what transportation volumes were industrial and what were commercial. *Id*. at 8:11-19. In fact, the Company was unable to identify any commercial transportation volumes and base-rate revenues for either the most recent twelve-month period available or for the test year. *Id*. at 9:1-3. There is no evidence that the commercial transportation volumes exist or have any effect on Mr. Effron's analysis. *Id*. at 9:4-9.

Mr. Effron's adjustment of a net increase to the Company's test year base rate revenues (under present rates) of $4,092,000 is necessary and reasonable. AG/CUB Ex. 6.0 at 5:4-9, *citing* AG/CUB Ex. 6.1, Schedule DJE-2R.

11. Software Rental Revenues

The Company proposes to include the test year costs of certain automated systems that will be owned by AIC, though Ameren Missouri will also use the systems and will be charged a rental fee to compensate AIC for the costs of developing and maintaining the systems. AG/CUB Ex. 1.0 at 30:731-31:741. However, though rental income from Ameren Missouri is expected once the systems are complete, the Company did not reflect any rental revenues in the revenue requirement. *Id*. at 31:742-45.

AIC's proposal burdens ratepayers with the cost of installing and amortizing new automated systems, but denies them the offsetting revenues arising from the shared use of the systems. *Id*. at 31:745-48. One of two adjustments is necessary. Assuming AIC will actually complete and place into service the new systems as planned in December 2014, the last month of the test year, rental income from Ameren Missouri should be acknowledged in rate base. *Id*. at 31:752-58. That is, Ameren's plan for the Missouri business to support 13.53% of the overall cost of the systems should be calculated as rental income. AG/CUB Ex. 5.0 at 48:1177-88. However, if the new systems are not expected to be complete within the test year, a much larger adjustment should be made to eliminate the capitalized cost of the systems and related depreciation/amortization expenses which should not be included in the test year revenue requirement. AG/CUB Ex. 1.0 at 31:758-31:762. This adjustment is quantified in AG/CUB Ex. 5.1 at page 3.

VII. RATE DESIGN

B. Contested Issues

1. GDS 1 Increase

In this proceeding Ameren continues its quest to increase its revenue assurance by proposing to increase the percentage of fixed costs it recovers through its residential customer charge to 85% from the current level of 80%. It also is proposing to consolidate the rates for Rate Zone I and Rate Zone III. Ameren's proposal results in revenues from customer charges increasing by more than the overall increase in revenue requirement and should be rejected. Specifically, in Rate Zone I, Ameren is proposing to increase base rate revenues from GDS-1 by

$5.16 million (10%), but it proposes to increase customer charge revenues by $6.6 million (16%). Ameren Sch. E-5, p. 1.[1] AG-CUB Ex. 3.0 at 20:376-383. The comparable figures for Rate Zone II are a base rate increase of $9.43 million (18%) and a customer charge increase of $10.52 million (25%). *Id.* For Rate Zone III, the figures are $13.44 million (11%) (base rate revenues) and $17.07 million (18%) (customer charge revenues). *Id.*[2]

Ameren's proposal has a disproportionate effect on the lowest users in Ameren's territory shifting the responsibility for providing revenues from higher-use customers to lower-use customers, particularly non-heating customers. For example, a non-heating customer using 20 therms per month in Rate Zone 1 would see its base rate bill increase from $23.31 under present rates to $26.41 under proposed rates, an increase of 13%. AG-CUB Ex. 3.0 at 21:389-394. In contrast, a heating customer using 100 therms in a winter month would see its bill increase from $30.22 under present rates to $32.29 under proposed rates, an increase of less than 7%. *Id*. Incredibly, a high-use heating customer using 300 therms per month would actually see its bill decrease under Ameren's proposal: a base rate bill of $47.50 under present rates compared to $47.00 under proposed rates, a decrease of about 1%. *Id*.

Similar rate effects occur in Rate Zones II and III. In Rate Zone II the non-heating customer using 20 therms per month pays $18.87 under present rates and would pay $23.20 under proposed rates, an increase of 23%. AG-CUB Ex. 3.0 at 22:422-429. The 100-therm heating customer would see its bill increase from $24.24 to $27.99, or by less than 16%. Finally, the 300-therm high-use customer would have its bill increase from $37.65 to $39.97, or by 6%.

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[1] Ameren's proposed increase of $5.16 million in Rate Zone I includes the effect of consolidating the GDS-1 class in Rate Zones I and III. Consequently, Ameren's proposed increase for customers in GDS-1 in Rate Zone I is less than the $6.97 million proposed increase listed in Ameren Exhibit 9.6, p. 1.

[2] Ameren's proposed increase of $13.44 million in Rate Zone III includes the effect of consolidating the GDS-1 class in Rate Zones I and III. Consequently, Ameren's proposed increase for customers in GDS-1 in Rate Zone III is more than the $11.61 million proposed increase listed in Ameren Exhibit 9.6, p. 1.

In Rate Zone III, the 20-therm non-heating customer's bill increases from $22.95 to $26.41, or by 15%. The 100-therm heating customer's bill increases from $29.88 to $32.29, or by 8%. Finally, the large-volume 300-therm customer's base rate bill would decrease from $47.19 to $47.00, a decrease of about 0.4%.

Mr. Rubin's analysis determined that Ameren has at least 30,000 non-heating customers who use less than 20 therms per month during the winter, with several thousand additional non-heating customers with annual usage slightly more than 20 therms (but certainly less than 50 therms). AG-CUB Ex. 3.0 at 23:430-436. Because the Company is proposing to decrease the per-therm consumption charge, the greatest dollar impact would be felt by the lowest-use customers. *Id*. at 23:440-447. Thus, it is not simply the percentage increase, but the total dollar increase in rates affecting low-use customers. *Id*. Conversely, the more gas a customer uses, the less of a rate increase – in dollars – the customer would see. *Id*. This occurs at usage levels of about 260 therms in Rate Zone 1, 625 therms in Rate Zone II, and 285 therms in Rate Zone III[3]. *Id*.

Mr. Rubin showed that Ameren's capacity-related costs account for 45% or more of the cost of serving residential customers. Capacity costs are derived from an allocation of facilities[4] based on some combination of average daily demand (the amount of gas used by the class throughout the year) and peak demand. Ameren Ex. 9.0 at 11-12. Mr. Rubin testified that only if the class is fairly homogeneous (all customers in a class use gas in similar ways so that they make a similar contribution to system demands) can these demand-related costs fairly be

[3] The billing data show that about 2% of Ameren's customers in Rate Zones I and III (about 11,000 customers) use more than 300 therms per month during January and February. In Rate Zone II, there are very few customers that use more than 600 therms per month in January and February (about 1/4 of 1%, or about 500 customers). AG-CUB Ex. 3.0 at 23-24:449-452.

[4] Including return on rate base, depreciation expense, and operating expense associated with former peak-day production facilities, the gas transmission system and the distribution network. AG-CUB Ex. 3.0 at 25:471-473.

recovered on a per-customer basis. AG-CUB Ex. 3.0 at 25:479-485. Where a customer class contains customers with a wide diversity in usage characteristics, it is not appropriate to recover demand-related costs on a per-customer basis. *Id*.

Ameren's GDS-1 customer class shows tremendous diversity and thus should not be allocated such significant capacity costs. During the winter months, consumption ranges from less than 20 therms per month to several hundred therms per month (and in a few instances more than 1,000 therms per month). AG-CUB Ex. 3.0 at 25-26: 487-498. For instance, a non-heating customer who uses less than 250 therms for an entire year is placed in the same class as larger heating customers who might use more than that amount of gas in a single month. *Id*. It is simply not credible to assert that a non-heating customer using 200 therms per year is placing the same demands on the system as those larger heating customers using more than 200 therms in a single winter (peak) month. Non-heating customers have a very small contribution to utility peak demands. *Id*. at 27:528.

These observations regarding the diversity of Ameren's residential customer class, combined with the inability of Ameren to identify specific information regarding non-heating customers (number of customers, demands and costs) led Mr. Rubin to a comparison between Ameren's residential intra-class disparities and that of Peoples Gas Light and Coke Company and North Shore Gas Company ("PGL-NS"). As a result of concerns raised about the impact of moving toward Straight Fixed Variable ("SFV") pricing for those utilities, (moving toward greater fixed cost recovery, in this case less than 70% of residential revenue recovery through the fixed customer charge), the Commission required each of those utilities to perform a cost-of-service study that separated the residential class into heating and non-heating customers. AG-CUB Ex. 3.0 at 26-27:503-516. In those utilities' 2012 rate cases, these studies found that the cost to serve non-heating customers was significantly lower than the cost to serve heating customers. *Id*. In fact, the costs were so much lower for non-heating customers that the utilities proposed reducing rates for non-heating customers by nearly one-third compared to the SFV-type of rate that had been adopted prior to separating the customer classes. *Id*. Indeed, their COSS witness's rebuttal testimony in those cases concluded that under present (SFV-type) rates non-heating customers provided the utilities with rates of return of 82.77% (North Shore) and 63.69% (Peoples Gas). *Id*. Those returns compared to the overall system return of about 4% under present rates, according to the utilities' analysis. *Id*.

From the data Mr. Rubin reviewed, he testified that, like PGL-NS, it is "highly likely that Ameren's average cost to serve a non-heating customer is substantially lower than its average cost to serve a heating customer." AG-CUB Ex. 3.0 at 28:543-544. The disparity could be far greater for Ameren's residential customers, because Ameren already recovers 80% of the residential revenue requirement in the customer charge. The diversity Mr. Rubin identified within the residential class supports his recommendation that the Commission require Ameren to conduct a cost-of-service study for its next rate proceeding that determines the cost to serve non-heating customers separately from the cost to serve heating customers.

Mr. Rubin's recommendations for setting residential customer rates in this proceeding is to reject Ameren's proposal to increase its SFV rate design to recover 85% of the revenue requirement in fixed charges, and instead freeze the customer charge at its existing level. AG-CUB Ex. 3.0 at 29:554-559. Any allowed increase to the revenue requirement approved in this proceeding would then be recovered through the per-therm delivery charge. *Id*. This interim measure would prevent the subsidies within the residential class from becoming greater.

2. Proposed Rate Increases for Rate Zone III GDS-4 and
3. Proposed Rate Design for Rate Zone II GDS-4

Ameren's proposed allocation of any rate increase begins with the results of its cost-of-service studies, but then deviates from those results very significantly in order to accommodate a constraint to the rate increase any class would receive. Ameren proposes that that no class should receive a percentage increase that is more than 1.5 times the system-average percentage increase. AG-CUB witness Rubin does not generally take issue with Ameren's proposed constraint, which can be a reasonable way to implement the rate design principles of gradualism and equity (or fairness) so that no customer class bears a disproportionate share of any rate increase. AG-CUB Ex. 3.0 at 5-6:111-117. Such a constraint also helps to moderate the effect that significant changes in cost allocation methodologies or internal operations may have on the allocation of the revenue requirement. *Id*. This type of constraint also ensures, in most cases, that all classes are making reasonable movement toward rates that would recover the full cost of serving the class. *Id*.

With respect to three of Ameren's five customer classes, however, this approach has the effect of exacerbating an already large discrepancy between class revenues and those classes cost of service. AG-CUB Ex. 3.0 at 5:99-106. These three customer classes are currently paying rates that are so far below the cost of serving the class that this constraint – not the cost of service – principally governs the amount of rate increase allocated to the classes. *Id*. Based on the evidence of these inter-class subsidies presented by AG-CUB witness Rubin, the Commission should either modify the constraint, or change the make-up of certain customer classes so that each customer class is making progress toward paying cost-based rates. AG-CUB Ex. 3.0 at 6:119-123.

Mr. Rubin recommends that the constraint of 1.5 times the average percentage increase should be applied, except where doing so over a series of five cases (approximately ten years) would not result in a customer class paying rates that approximate its cost of service. AG-CUB Ex. 3.0 at 6:125-131. When certain customer rate classes would not generate revenues that approximate their cost of service over this presumed 10-year period, then Mr. Rubin recommends either (a) increasing rates so that cost-based rates would be achieved through approximately equal percentage increases over a span of five rate cases or (b) changing the make-up of the customer class so that its cost characteristics are substantially modified. *Id*.

<u>Rate Zone I:</u>

The rates for GDS-4 and GDS-5 in Rate Zone I remain substantially below the cost of service for those classes. Specifically, the proposed rates for GDS-4 would recover $3.77 million, as compared to the cost of serving the class of $4.53 million, or only about 83% of the class's cost of service. AG-CUB Ex. 3.0 at 7:139-142. Even worse, Ameren's proposal for GDS-5 would recover just $315,000 of the class's $1,258,000 cost of service, or just 25% of the class's cost. These figures already take into account an increase to each class that is 1.5 times the system-average percentage increase. AG-CUB Ex. 3.0 at 7:143-146.

In order to approximate the impact of the Company's proposal, Mr. Rubin conducted an analysis assuming that Ameren would seek a delivery service rate increase of 14% every other year for the next eight years. AG-CUB Ex. 3.0 at 8:152-159.Mr. Rubin's analysis demonstrates that the GDS-4 class in Rate Zone I is likely to approximate full-cost pricing by applying the 1.5 times constraint in this and the next four cases. *Id*. The same is not true, however, for rate GDS-5. If the cost of serving GDS-5 in Rate Zone I increased 14% in each of the next four cases, the cost would be approximately $2.1 million ten years from now. *Id*. at 8:160-166. If the revenues from the class increased by 1.5 times the system-average increase during that same period, then the class's revenues would be only $675,000, or about one-third of the cost of service ten years from now. Under the hypothetical situation, it would require an increase in each case of approximately 52%, or more than three times the system-average increase, for GDS-5 in Rate Zone I to be paying rates that recover the class's cost of service by the end of ten years. *Id*. at 9:170-173.

Mr. Rubin's recommendation regarding the treatment of this discrepancy is dependent on whether the Commission makes changes to the requirements for service under GDS-5. While GDS-5 is supposed to include only seasonal customers who do not use gas during the winter heating season and therefore do not contribute to the system peak, Mr. Rubin identified some customers taking service under GDS-5 that are causing the system peak to increase. *Id*. at 9:176-180. This disparity, concluded Mr. Rubin, is what drives at least in part the disparity between the class's revenues and the cost of serving the class. *Id*. at 10:188-89. If the Commission does not change the requirements for service under GDS-5, then the rates for this class would need to increase substantially (52%) in order to move the rates toward covering the cost of service for the class over a reasonable period of time. *Id*. at 10:190-193.

Mr. Rubin's preferred alternative for handling this discrepancy, however, is for the Commission to terminate the experiment that allowed peaking customers to take service under a non-peaking, seasonal rate. *Id*. at 10:193-199. This would reduce the cost of serving the class, such that constraining the class's increase to 1.5 times the system average increase would be reasonable in this case. *Id*. This issue then would need to be re-evaluated in the Company's next rate case to ensure that progress is being made toward charging cost-based rates to GDS-5 customers. *Id*.

Rate Zone II:

In Rate Zone II, Mr. Rubin concluded that the rates for GDS-3, GDS-4, and GDS-5 remain substantially below the cost of service for those classes. AG-CUB Ex. 3.0 at 11:207-211. As was the case in Rate Zone I, Ameren's proposal for GDS-5 in Rate Zone II under-recovers the costs of serving those customers, yet the results here are even worse than for Rate Zone I. Proposed rates for GDS-5 in Rate Zone II would recover just $587,000 of the class's $1,509,000 cost of service, or just 39% of the class's cost (these figures were determined after giving the class an increase that is 1.5 times the system-average percentage increase). AG-CUB Ex. 3.0 at 11:212-217.

Under Mr. Rubin's hypothetical scenario where Ameren would seek a delivery service increase of 21% every other year for the next ten years, with the constraint of 1.5 times the average increase applied to each class, the GDS-3 and GDS-4 classes in Rate Zone II are likely to approximate full-cost pricing in this and the next four cases. *Id*. at 12:223-230. Like with Rate Zone I, the cost of serving GDS-5 in Rate Zone II will exceed the 1.5 system average increase acceleration significantly. Ten years from now, if the cost of serving GDS-5 in Rate Zone II increased by 21% every two years, the class's revenues would be 55% less than that class's cost of service. *Id*. at 13:243-246. Under the hypothetical situation, an increase approximately 49%, or almost 2.5 times the system-average increase, would be required for GDS-5 customers in Rate Zone II to be paying rates that recover the class's cost of service by the end of ten years. *Id*. at 13:250-253.

In total dollars, the residential class (GDS-1) in Rate Zone II is being asked to pay rates in excess of the cost of serving the class of $3.8 million, with about $800,000 of that subsidy going to the GDS-5 class of customers. AG-CUB Ex. 3.0 at 13: 256-261. Mr. Rubin concluded that a subsidy of this magnitude to what is supposed to be a non-peaking class is inappropriate. *Id*. Like with Rate Zone I, Mr. Rubin recommends either that the Commission change the requirements for service under GDS-5, and reassign those customers contributing to the system peak, or increase rate GDS-5 in Rate Zone II by 49% in this proceeding. *Id*. at 14:263-266. This increase would move the rates toward covering the cost of service for the class over a reasonable period of time. *Id*.

<u>Rate Zone III:</u>

Like Rate Zones I and II, rates for GDS-4 and GDS-5 in Rate Zone III remain substantially below the cost of service for those classes. AG-CUB Ex. 3.0 at 14:274-275. Unlike Rate Zones I and II, however, increasing the revenues for GDS-4 by 1.5 times the system average increase over the next four rate cases, assuming a delivery service rate increase of 11% every other year for the next ten years, under the existing rate constraints proposed by Ameren is inadequate to bring the rates for GDS-4 in Rate Zone III to the cost of service within a reasonable period of time. *Id*. at 15:286-294. Using Mr. Rubin's assumptions, an increase of approximately 26%, or approximately 2.4 times the system-average increase, for GDS-4 in Rate Zone III would be required to generate rates that recover the class's cost of service by the end of ten years. *Id*. Thus, Mr. Rubin recommends that the rates for GDS-4 in Rate Zone III should be increased by between 2.0 and 2.4 times the system-average increase in this case in order to make reasonable progress in moving the class cost of service to full recovery. *Id*. at 16:304-308.

Ameren is proposing to close this gap by only $1.17 million, leaving $6.6 million for other classes to absorb. AG-CUB Ex. 3.0 at 16:308-317. Most of that subsidy – more than $5.2 million – is being provided by residential customers in Rate Zone III. *Id*. Mr. Rubin testified that a subsidy of that magnitude for such an extended period of time is not consistent with the principle of cost-based pricing. *Id*. The principle of fairness must outweigh that of gradualism in this situation, because the difference between revenues and costs is simply too great to constrain the increase to 1.5 times the average increase for GDS-4 in Rate Zone III. *Id*. Keeping this constraint in place for the next ten years still would not have the class's revenues even approach the cost of service. *Id*. More should be done to move the class toward the cost of service over a reasonable period of time. *Id*.

Similarly, increasing rate GDS-5 in Rate Zone III by only 1.5 times the system average increase would fall well short of recovering the cost of service for this class. If the revenues from the class increased by 1.5 times the system-average increase, then the class's revenues would be only $1.52 million, or about 60% of the cost of service ten years from now. *Id*. at 17:321-323. Using Mr. Rubin's assumptions, (a delivery service rate increase of 11% every other year for the next ten years), an increase in each case of approximately 28.5%, or more than 2.5 times the system-average increase, would be required for GDS-5 in Rate Zone III to be paying rates that recover the class's cost of service by the end of ten years. *Id*. As explained for rates GDS-5 in Rate Zones I and II above, Mr. Rubin would first recommend that the Commission change the requirements for service under rate GDS-5 to reassign customers who contribute to the system peak to another, more appropriate class. AG-CUB Ex. 3.0 at 18:340-343. Alternatively, Mr. Rubin recommends that the Commission increase the rates for GDS-5 by 28% in order to move the rates toward covering the cost of service for the class over a reasonable period of time. *Id*.

In conclusion, Ameren proposes to have residential customers pay $11.4 million in excess of the cost of service to subsidize service received by Ameren's largest customers. Small commercial customers (GDS-2) would contribute an additional $2.9 million, resulting in total subsidies of more than $14 million. These subsidies are unacceptably large and call for steps to eliminate them over a reasonable period of time.

VIII. SVT PROGRAM

B. Resolved Issues

1. SVT Program Separate Proceeding

After arguing strenuously against any delay in the approval of Small Volume Transportation ("SVT") tariffs beyond this proceeding[5], ICEA/RESA and RGS now apparently concede to delaying approval of an SVT tariff to a future tariff proceeding. The acquiescence of the Retail Gas Suppliers ("RGS") to litigating unresolved issues in a separate proceeding is surprising to CUB, considering that RGS introduced significant rhetoric in pleadings ascribing subversive motives to CUB for supporting the very procedure to which it now agrees[6]. Nonetheless, CUB agrees that litigating all unresolved SVT issues in a separate tariff proceeding is the prudent course and would allow the Commission and stakeholders additional time to vet important and relevant issues related to the SVT program in sufficient detail, if the Commission determines to go forward with an SVT program.

The SVT tariff filing should not be considered a foregone conclusion, however. The Commission must first find substantial evidence in this proceeding that is sufficient to support moving forward with an SVT program in Ameren territory, before it directs AIC to file proposed tariffs in a separate proceeding. If the Commission does not have sufficient evidence on which to make this determination, and declines to go forward with an SVT program, no separate tariff

[5] See ICEA/RESA Ex. 3.0 at 3:39-40; ICEA/RESA 4.0 at 3:39-40; RGS Ex. 1.0 at 9:182-183; RGS Ex. 2.0 at 7:137-138.

[6] The *Retail Gas Suppliers' Verified Motion to Admit Certain Data Request Responses Into The Evidentiary Recdord*, filed on August 27, 2013, states that the discovery at issue in the motion was relevant to rebut CUB's invocation of "the lack of 'consensus' in the Workshops as a reason to delay implementation." In fact, that was not CUB's position. Rather, CUB agreed with Staff – and now apparently RGS itself – that litigation in a separate proceeding made sense to address several unresolved issues.

proceeding would obviously be necessary. It is also important to note that, if the Commission decides to forge ahead with an SVT program in Ameren territory, there are important consumer protection issues that the Commission can and should decide in this docket. Mr. Cohen makes specific recommendations regarding additional consumer protections in this record, which enable the Commission to include requirements in its order in this docket. This issue is discussed more fully below in section B.1. below.

2. Budget Billing Plan for SVT Customers
3. Rider SVT
    i. Tariff Language Changes
    ii. Assessment of Pipeline Penalties
    iii. Utility Consolidated Billing
    iv. Stakeholder Meetings
    v. Rescission Period
4. Rider GTA
    i. Sunset Provision
    ii. Use of System Weighted Average Cost of Gas
    iii. Tariff Language Changes
5. Rider GSIC
    i. Tariff Language Changes
    ii. Identification of Costs to be Recovered
    iii. Storage Inventory Transactions
6. Price to Compare

C. Contested Issues

1. Approval of SVT

Before considering specific implementation options, the threshold issue for the Commission's consideration is whether or not to go forward with an SVT program in Ameren territory. At the outset, the issue of whether – and how – the Commission should order a Small Volume Transportation Program to go forward must be placed in the proper context. While the Commission has expressed support for retail gas competition, there is no statutory mandate for its implementation, unlike in the Illinois electric industry. The only entities actively seeking approval for the tariff are the AGS themselves. In Ameren's last general rate proceeding, ICC

Docket No. 11-0282, the Retail Gas Suppliers requested that the Commission direct Ameren to develop a natural gas choice program for residential and small commercial customers. See *Ameren Illinois Company d/b/a Ameren Illinois*, Proposed general increase in natural gas rates (tariffs filed February 18, 2011), ICC Docket No. 11-0282, Jan. 10, 2012 Order at 185 ("11-0282 Order"). Staff, CUB, the AG and Ameren all recommended that the Commission adopt a slower approach and await a report from the Commission's Office of Retail Market Development ("ORMD") before proceeding. The Commission ultimately determined that it would proceed with a workshop process to address:

> the issue of whether an SVT is appropriate for the AIC service territories, with the issues to be covered including those addressed by the parties, which appear to include: whether there would be any benefit to customers from such a program; whether the costs of implementing such a program would be reasonable; whether there is utility support for the competitive market; will there be full utility cost recovery for the utility; and a properly adjusted price-to-compare.

11-0282 Order at 194. The Commission made clear in its 11-0282 Order that it was not intending to "prejudge whether and to what extent a natural gas retail choice program may be appropriate for AIC." 11-0282 Order at 195.

Multiple workshops took place in 2012[7]. After filing the instant rate proceeding, Ameren filed a draft SVT tariff (along with the testimony of Vonda Seckler, AIC Ex. 13.0) that was partially the result of discussions in the workshops. AIC Ex. 13.1, 13.2. Ameren did not request approval of these tariffs and they were not suspended. Ameren's Senior Vice President of Regulatory Affairs and Financial Services, Craig Nelson, testified that the utility stands willing to implement such a program provided that the Company gets "clear direction from the

[7] As CUB argued in its Motion to Strike Certain Rebuttal Testimony of RGS Witness Crist and ICEA/RESA Witness Wright, rhetoric regarding the substance of CUB's participation in the workshop process is incorrect, irrelevant and must be ignored, considering such statements do not inform the Commission about any issue currently in dispute in this proceeding.

Commission" and that its SVT implementation costs are fully recovered, but does not propose its adoption in this docket. AIC Ex. 1.0 at 7:125-129. RGS and the Retail Energy Supply Association ("RESA") and the Illinois Competitive Energy Association ("ICEA") filed testimony not surprisingly in general support of the SVT tariff, but also addressed specific issues with various components of the SVT program tariffs, including, (among other issues specifically identified in this brief outline), rescission periods (ICEA/RESA Ex. 4.0 at 14-15:280-308); assessment of pipeline penalties (*Id*. at 15-16:313-331); and Price-To-Compare (RGS Ex. 2.0 at 8-10:163-199). CUB sponsored the testimony of former ICC Chairman, Martin Cohen, an expert with over 25 years experience in utility consumer issues, who testified regarding the need for an analysis of the costs and benefits of SVT, necessary consumer protections, tracking of costs and benefits of retail gas choice in AIC territory and annual reports to the Commission. *See*, generally, CUB Ex. 1.0 and 2.0.

a. The Commission Must First Evaluate SVT Costs and Benefits

In order to determine whether to go forward with an SVT program, CUB witness Cohen testified that, as a threshold question, the Commission should seek evidence of qualitative and quantitative benefits from SVT, how those benefits would be derived, and how the projected benefits compare to projected costs of implementation and operation of the SVT program. CUB Ex. 1.0 at 2:32-35. To proceed without conducting this analysis would not be consistent with the Commission's own directive in Docket No. 11-0282 to consider "whether there would be any benefit to customers from such a program." 11-0282 Order at 194. It would also disregard Illinois law requiring the Commission to analyze the impact on consumers in order to reach a determination that the program costs are just and reasonable. *See Abbott Laboratories v. Illinois Commerce Comm'n*, 682 NE2d 340, 350 (Ill. App. Ct. 1st Dist. 1997; *Citizens Utility Board v.*

Illinois Commerce Comm'n, 658 N.E.2d 1194, 1201 (Ill. App. Ct. 1st Dist. 1995). Considering that the costs of the program will be recovered from all Ameren's residential customers, the Commission should conduct an analysis of the costs and benefits of the program as they relate to those customers who will be affected by it.

The notion that the Commission should consider costs of a proposed tariff in light of benefits is hardly novel. In a recent Commission proceeding in which Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor") sought approval of a Purchase of Receiveables ("POR") tariff, ICC Docket No. 12-0569, the Commission denied the tariff, citing (among several other reasons) the fact that "there is no evidence regarding the impact of this proposed rider on consumers other than potential benefits such as lower customer costs and increases in competition purported by RESA/IGS; benefits for which the Company does not necessarily provide support." Order at 18. The Commission further concluded that "other than stating that these are potential benefits, there is a distinct lack of evidence in the record that the Commission can rely on to support that these benefits would occur." A similar analysis should apply in this proceeding, where the only entities actively seeking approval of Rider SVT are the very parties who stand to benefit from it.

b. The Alleged Benefits of SVT are Speculative

The discussion in Mr. Wright's and Mr. Puican's testimony regarding the benefits of competitive gas choice are entirely theoretical. Mr. Wright testified that "suppliers who currently offer electric service in AIC's service territory may be able to offer "multi-product" discounts for natural gas in combination with electricity offerings." ICEA/RESA Ex. 1.0 at 6:110-112. While this may occur, no RGS or ICEA/RESA witness was able to provide any specific plans or commitments to make such offerings. More importantly, however, there is no evidence that the mere offering of "multi-product discounts" will provide actual value – in the form of lower rates – to customers. Mr. Wright further testified that "ICEA and RESA maintain that AGS can not only offer customers savings but other value-added services that include the ability to set a fixed-price for a set number of years or more innovative service offerings that could fuel a natural gas vehicle or provide free gas with installation of a fuel efficient furnace." Id. at 7:121-125. Again, no evidence of either the specific plans or commitments to make such offerings was provided.

Tellingly, the supplier groups advocating for adoption of an SVT program for Ameren territory did not present any evidence of customer savings or innovative product offerings in the existing gas choice marketplace in Northern Illinois. Residential customers in the territories of Peoples Gas Light & Coke Company ("Peoples Gas"), North Shore Gas Company ("North Shore") and Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor") have been able to choose a gas supplier for many years. Yet, while Mr. Puican devotes most of his testimony to a discussion of the experience in Ohio, he acknowledged that he did not perform an analysis of the retail gas supply offers in Illinois. CUB Ex. 2.0 at 3:53-54. Mr. Puican points to the Ohio auction platform as "an illustration of the market to produce lower retail natural gas commodity prices than the existing regulatory system," (ICEA/RESA Ex. 2.0 at 5:99-101), but did not even attempt to analyze the data regarding commodity prices in Illinois and whether AGS serving customers in Northern Illinois have been able to save customers money or provide desireable product offerings.

The Commission should reference the experience within Illinois to date in determining whether to move forward with choice in Ameren territory. If substantial benefits have been experienced by customers in these Northern Illinois gas utility territories, those benefits should be demonstrated and quantified – or at the very least reviewed – in this proceeding for the Commission to make an informed decision about whether to expand gas choice into Ameren territory. None of ICEA/RESA or RGS witnesses produced any quantification of how supplier offers have compared to the rate charged by the utility (the Purchased Gas Adjustment charge, or PGA) in Northern Illinois.

Rather than show data from existing gas choice programs in Illinois, ICEA/RESA attempt to compare gas choice in Ameren territory to electric choice in Ameren territory. This analysis fails on multiple counts. ICEA/RESA witness Wright argues that residential customers in Ameren territory who now have the choice to purchase electricity from an alternative supplier should be given the opportunity to choose their natural gas supplier. ICEA/RESA Ex. 1.0 at 10:210-212. As Mr. Cohen testified, the retail electricity market and the retail gas market have markedly different dynamics due to differences in policy, law, and physics. CUB Ex. 2.0 at 5:107-109. The element that most distinguishes them in the experience of residential customers in Illinois: almost all residential electricity customers served by non-utility providers did not choose a provider but instead had the choice made for them by their local government, under the state's municipal aggregation program. *Id*. at 6:110-121. The Office of Retail Market Development 2013 Annual Report pursuant to Section 20-110 of the Public Utilities Act reports that a total of just 173 residential electricity customers of AIC were served by non-utility providers prior to the advent of municipal aggregation. *Id*. In the SVT gas market, shopping customers will indeed be making a choice, as municipal aggregation does not exist for gas supply. *Id*. Mr. Cohen also takes issue with Mr. Wright's claim that there is "an existing customer base of knowledge and awareness" regarding retail energy shopping. ICEA/RESA Ex. 1.0 at 6:112-116. Mr. Cohen testified that he sees "no evidence that most residential customers have yet acquired sufficient knowledge and awareness to be smart shoppers in the natural gas market, particularly in light of the many products that Mr. Wright envisions being offered." CUB Ex. 2.0- at 6:118-121.

c. The Costs of SVT Are Real and Significant

The costs of implementing an SVT program are significant. Ameren has sought to include approximately $10.6 million in base rate investments and expenses related to the implementation of an SVT program, which translates to approximately $2.12 million of Ameren's proposed revenue increase. See ICEA/RESA Ex. 4.0 at 9:172-174. CUB did not have an accounting expert review the just and reasonableness of this cost and therefore does not propose a specific disallowance of these costs. However, the Commission must evaluate these costs and conclude that they are just and reasonable, if those costs are to be included in any approved revenue requirement in this proceeding. The costs of SVT are proposed to be recovered from all Ameren customers. See Ameren Ex. 1.0 at 7:122-123.

The Commission should order Ameren to file Rider SVT at the conclusion of this docket only if evidence demonstrates that it is in the public interest, and that the benefits from the option of participating in the SVT program outweigh these costs that all customers will pay. CUB Ex. 1.0 at 9:180-185. Such "socialized" cost recovery is not just and reasonable without a showing of concomitant benefit. *Id*. Proponents of SVT implementation should provide evidence as to a) why and how SVT will provide benefits to customers b) how quantifiable benefits compare to projected SVT costs and c) how an SVT program would benefit non-participants. *Id*. As pointed out above, RGS and ICEA/RESA witnesses discussions of the benefits of competitive gas supply were general and theoretical, and ignored the actual experience in Illinois to date.

d. Inherent Market Challenges Make It Difficult For AGS To Offer Savings Or Market Alternative Products to Customers In An Understandable Way

In order to operate profitably, a gas retailer must sell gas at prices that exceed its commodity procurement costs by an amount sufficient to cover its costs of marketing, administration, and customer service, as well as provide a profit to the firm. CUB Ex. 2.0 at 5:97-99. Mr. Cohen discussed the challenges inherent in achieving retail profitability without use of false or misleading marketing or taking unfair advantage of consumers' ignorance about gas markets and pricing. These challenges stem from the utility pricing of the natural gas commodity, which fluctuates monthly under each gas utility's Purchased Gas Adjustment ("PGA") clause. CUB Ex. 1.0 at 7:140-147. Public utilities like AIC procure gas from the competitive wholesale gas market using a variety of sources and mechanisms. *Id*. Subject to annual regulatory reviews, utilities execute gas procurement strategies utilizing pipeline storage, injections, and withdrawals from company-owned storage, competitively bid supply contracts, spot purchases, and financial hedges designed to provide the lowest possible price to customers consistent with sufficiency, reliability, and mitigation of price volatility. *Id.* Gas supply customers are provided gas commodity by Ameren at the Company's cost per unit of energy, without a markup. *Id.*

While AGS can and do offer different products that vary from this model, these products can be very difficult for consumers to evaluate. For example, if an AGS offers a fixed priced product for a period of time, it is difficult for customers to assess the value of such a product because customers cannot predict future gas market prices or utility PGAs. CUB Ex. 1.0 at Thus, at least with fixed-priced products, achieving cost savings from locking in a fixed price is essentially a matter of luck. In order to save money one would have to sign up for a fixed price at a time when the market price (and therefore the utility procurement cost) is above the fixed price offered or is about to go up (and stay up) for the remainder of the term of the agreement. 7-8:150-167. Another potential pricing option from a gas marketer might be an indexed price, fluctuating monthly and tied to the market price. *Id*. A price indexed to the wholesale market would likely fluctuate over time to a greater degree than the utility supply price, which, as discussed above, includes hedges to reduce price volatility. *Id.* In all cases, the retailer must offer prices that are sufficient to cover its costs of marketing, which a public utility does not incur. *Id.* This makes it challenging for a gas retailer to provide long-term gas commodity savings for small volume customers. *Id.*

Without data on the benefits to customers in Northern Illinois who have chosen an AGS, and in light of the significant market barriers to providing savings, as well as the substantial costs of implementing SVT, if the Commission were to approve SVT implementation, it would do so in reliance on its past support for retail marketing and its belief in future as yet unquantified benefits. Thus, approval of SVT for AIC would essentially be based on the Commission's faith that effective competition will eventually emerge in the Ameren retail gas market and that this emergence will bring lower gas costs and additional product offers to consumers, not evidence that such effect is likely to occur. While CUB understands the pro-competitive spirit of the PUA, the Commission cannot ignore the void of evidence supporting expansion of SVT in Ameren territory, especially when examined against the documented marketing abuses discussed in Section VIII. C. 3 below.

2. Purchase of Receivables

The draft SVT tariff presented by Ameren includes a Purchase of Receiveables ("POR") component. CUB witness Cohen did not testify regarding the POR component of Rider SVT.

CUB did not have the capacity to review POR in the context of the myriad issues in this rate proceeding. Thus, the issue of POR should be further explored in the tariff proceeding that is filed subsequent to a Commission determination to go forward with SVT in Ameren territory.

3. Consumer Protections

If the Commission decides that SVT for AIC is lawful and in the public interest, the Commission must address the critical issues associated with consumer protection in light of experience in other service territories prior to ordering implementation. Consumer protection has been a vexing issue in other Illinois SVT programs. Examples of misleading and deceptive marketing have been documented in the service territories of Northern Illinois Gas Company ("Nicor") and Peoples Gas Light and Coke Company ("Peoples Gas"). While no evidence of measurable customer benefits has been presented to the Commission during the decade of operation of the "Customer Select" and "Choices For You" programs, numerous complaints by customers have been received by the Commission, the Attorney General, and by CUB, an organization created by the General Assembly to "represent and protect the interests of the residential utility consumers of this State." (220 ILCS 10/5(1)(a)).

CUB and the Attorney General first filed a case more than a decade ago with the Commission alleging improper activities by one gas marketer. The complaint in *Citizens Utility Board v. Santanna Natural Gas Corporation*, (ICC Docket No. 02-0425) was dismissed, but the issues raised were litigated in ICC Docket 02-0441 and the Commission was "deeply troubled by Santanna's marketing practices." ICC Docket No. 02-0441 Final Order at 27. More recently CUB was joined by Citizens Action/Illinois and AARP in another complaint regarding misleading marketing of Illinois Energy Savings Corp. d/b/a U.S. Energy Savings Corp., now known as Just Energy Illinois Corp. ("Just Energy"). In that case, ICC Docket No. 08-0175, the

Commission found violations by Just Energy including "slamming" (switching customers' service from the utility to an alternative supplier without their consent) and failure to properly disclose prices. Just Energy remains under an audit process ordered by the Commission. *See* ICC Docket No. 10-0398. Additionally, Mr. Cohen testified that he personally experienced false and misleading claims made during several sales calls – both telemarketing and door-to-door – by gas salespersons at his home. He informed the Commission in 2010 about the specifics of one such occurrence, which is attached to his testimony as CUB Ex. 1.1.

The Commission cannot ignore this experience in determining whether and how to go forward with gas choice in Ameren's territory. While revisions to the Alternative Gas Supplier Law in the Public Utilities Act around 2009, (*see* 220 ILCS 5/19-110-115), provide additional layers of scrutiny to the ARG certification process, these provisions do not directly address the severity of the problems seen with the door-to-door sales model and its potential for customer confusion and/or misleading marketing. Thus, Mr. Cohen recommends that three specific consumer protections be mandated by the Commission in its order in this proceeding, if the Commission decides to proceed with an SVT program:

1) A customer shall be absolved from paying any termination fees if, prior to the due date of their first bill, they notify the supplier that they are terminating the contract.

2) When a customer has accepted service from a supplier after solicitation by a door-to-door salesperson, there shall be no termination fees assessed if the customer terminates during the first 6 billing cycles.

3) If a supplier's marketing materials include a price comparison of the supplier rate and the gas utility rate, the depiction of such comparison shall display at least three years of data in no greater than quarterly increments and shall also display the supplier's offered price for the same or equivalent product(s) or service(s) for each of the same increments.

CUB Ex. 2.0 at 9-10:196-204. As Mr. Cohen testified, "[b]y allowing consumers to terminate service without penalty in a reasonable time after execution of an agreement, and requiring equivalent price comparisons over a reasonable period of time, these consumer protections would address the well-documented problems of misleading marketing seen in Northern Illinois gas choice programs." *Id*. at 10:206-210

Furthermore, Mr. Cohen recommends that OMRD be ordered to track costs and benefits of retail gas choice in the AIC service territories and report annually on them to the Commission in a public document. CUB Ex. 2.0 at 8:164-173. The report should also include information about the extent and effectiveness of competition in the AIC residential gas markets, including the number of customers who have switched to alternative suppliers, the prices and terms of supplier contract offers, the relevant utility price to compare for the same period, and the number and nature of complaints to the ICC regarding each supplier, and other information deemed appropriate by the Commission. *Id*. This information is critical to a policy decision to move forward with SVT, because the putative benefits of SVT are speculative while the costs are real and substantial, as is the potential for customer confusion and/or misleading marketing. *Id*. at 9:176-186. Ameren is also in a unique situation as Illinois' only large combined gas and electric utility. *Id*. Most of its small volume electric customers already purchase electricity from competitive suppliers through municipal aggregations. *Id*. The implications of these existing relationships for the dynamics of the retail gas market are unknown, particularly if AIC also becomes the only Illinois gas utility with POR in place. *Id*. Essentially, SVT would be an experimental program, and its results over time should be carefully scrutinized. *Id*. In order to consider whether program changes are necessary to improve the effectiveness of competition and the benefits to customers, Mr. Cohen recommends that the Order include a Commission review of SVT after 24 months of operation. *Id*.

4. Discount Rate for SVT and UCB/POR Customers

As stated above, CUB believes this issue should more appropriately be addressed in any subsequent tariff proceeding regarding Rider SVT, if the Commission orders such a proceeding to commence.

XI. CONCLUSION

WHEREFORE, CUB respectfully request that the Commission adopt the positions and adjustments set forth in this Initial Brief and adjust AIC's revenue requirement and rate design accordingly.

Dated: September 20, 2013

Respectfully Submitted,

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